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The examiner interprets the preamble as being a limitation upon claim 9. Therefore, the phrase "absorbable material" is considered to be a limitation upon the material used in the rivet. For clarity, the examiner suggests that applicant amend claim 1 so that the word "absorbable" reads "bioabsorbable" for "bioabsorbable" is a more accurate term.

In response to applicant's arguments, the examiner submits that both the rejections under §102 and §103 are proper.

Applicant's remarks in relation to the §102 rejection assert that the limitations of the claims are not disclosed in the prior art. The first of these assertions is that the material is not flexible. However, the examine submits that the material is only semi-rigid, thus, the material has a degree of flexibility. Therefore, the material is flexible. Also, applicant is to note that Bays et al disclose using the same material as applicant recites in the specification. Bays et al disclose that Polyglycolide can be used as a material based upon the desired absorption rate for the material. (column 5, lines 44-47)

In relation to the amendment of claim 9, on lines 10 and 11, which recite that the projections are larger than the dimension of the rivets head, and applicant's argument that the first projection is larger than the remaining projections, the examiner submits that Bays et al discloses that the projection at the head is the smallest of the projections. The examiner submits that

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the projections "[widen] in diameter in a direction from distal end 12 toward proximal end 11". (column 4, lines 32-35) The driving tip as recited in claim 11 is clearly shown in Figure 1 of Bays et al. In response to applicant's arguments that the force and motion required to insert the rivet of Bays et al is greater than that needed to apply applicant's rivet is beyond the scope of applicant's claims.

In response to applicant's remarks which relate to the combination of Bays et al and Chisholm et al., the examiner submits that Chisholm et al. is analogous prior art. These references are analogous for they are both rivets which are used for fastening. Chisholm et al. teach that their rivet is not as easily removed from a bore as is the prior art rivet. They teach that their rivet will maintain its position in a hole better than that of the prior art. Therefore, Chisholm et al teach an advantage to their rivet and one of ordinary skill wishing to better secure the rivet of Bays et al would have looked to the rivet and teachings of Chisholm et al. Therefore, the examiner submits that the modification of Bays et al in view of Chisholm et al is both obvious and proper.

This is a file wrapper continuation of applicant's earlier application S.N. 07/965,069. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next

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Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Hanlon whose telephone number is (703) 308-2678.

beh  
June 28, 1994

  
**ROBERT A. HAVER**  
S.P.E.  
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